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Return Date: October 10, 2000  
10:00 AM

Attorneys for  
ChinaTrust Commercial Bank (New York Branch)

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
In re: : Chapter 11  
: Case Nos. 00 B 41065 (SMB)  
RANDALL'S ISLAND FAMILY : through 00 B 41196 (SMB)  
GOLF CENTERS, INC., *et al.*, :  
: (Jointly Administered)  
Debtors. :  
----- X

NOTICE OF HEARING WITH RESPECT TO MOTION PURSUANT TO 11 U.S.C. SECTION  
105 TO ENFORCE THIS COURT'S JUNE 2, 2000 FINAL ORDER GRANTING ADEQUATE  
PROTECTION TO PRE-PETITION SECURED PARTIES AND TO COMPEL PAYMENT OF  
ADEQUATE PROTECTION PAYMENTS

PLEASE TAKE NOTICE that a hearing to consider the annexed motion filed on behalf  
of ChinaTrust Commercial Bank (New York Branch) ("CTCB"), secured creditor, by and  
through its attorneys, Wong Fleming, and any timely filed objections thereto will be heard on  
October 10, 2000 at 10:00 a.m., Eastern Time, before the Honorable Stuart M. Bernstein, United  
States Bankruptcy Judge, United States Bankruptcy Court, Alexander Hamilton Custom House,  
One Bowling Green, New York, New York 10004

PLEASE TAKE FURTHER NOTICE that the moving and any objecting parties are required to attend the hearing and failure to attend in person or by counsel may result in the motion being granted or denied upon default.

Dated: September 26, 2000

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By: /s/ Daniel C. Fleming  
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**MOTION, PURSUANT TO 11 U.S.C. §105, TO ENFORCE THIS COURT'S JUNE 2, 2000 FINAL ORDER GRANTING ADEQUATE PROTECTION TO PRE-PETITION SECURED PARTIES AND TO COMPEL PAYMENT OF ADEQUATE PROTECTION PAYMENTS**

TO: THE HONORABLE STUART M. BERNSTEIN,  
UNITED STATES BANKRUPTCY JUDGE

ChinaTrust Commercial Bank (New York Branch) ("CTCB"), by and through its attorneys, Wong Fleming, pursuant to 11 U.S.C. §105, hereby moves for entry of an Order enforcing the provisions of this Court's June 2, 2000 *Final Order (I) Authorizing Debtors To (A) Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3) and 364(d)(1), And (B) Utilize Cash Collateral Pursuant To 11 U.S.C. §363, And (II) Granting Adequate Protection To Pre-Petition Secured Parties* (hereinafter the "Adequate

Protection Order") and to compel the Debtors to make the adequate protection payments required under paragraph nineteen of the June 2, 2000 Order. In support thereof CTCB states:

### **INTRODUCTION**

1. CTCB is a "Pre-Petition Non-Primed Lender" under the terms of the Adequate Protection Order.

2. Paragraph nineteen of the Adequate Protection Order unambiguously requires the Debtors to pay the Pre-Petition Non-Primed Lenders "all amounts of accrued and unpaid interest through June 30, 2000" by July 3, 2000 as follows:

As adequate protection for any diminution in value of the valid and perfected interests, if any, of any of the Pre-Petition Non-Primed Lenders \* \* \* the Debtors will pay to the Pre-Petition Non-Primed Lenders interest, on a monthly basis, in arrears, payable on the first business day of each month (with the first payment being due on July 3, 2000, which shall include all amounts of accrued and unpaid interest through June 30, 2000) at the non-default contract rate to each of the Pre-Petition Non-Primed Lenders under the terms of their respective loan agreements with the Debtors (the "Adequate Protection Payments"). \* \*

A copy of the Adequate Protection Order is annexed hereto as Exhibit "A".

3. The Debtors have violated the terms of the Adequate Protection Order. **All** interest owed to CTCB through June 30, 2000 was not paid by July 3 and has not been paid to date. CTCB has not received from Debtors pursuant to the Adequate Protection Order any unpaid interest which accrued **pre-petition**, it has only received interest which accrued during

the **post-petition** period. Because the Debtors refuse to pay CTCB all accrued and unpaid interest, as required by the Adequate Protection Order, enforcement by this Court is required.

4. On July 21, 1999, CTCB made a loan in the original principal amount of \$10,000,000 to Family Golf Centers, Inc., and Denver Family Golf Centers, Inc. As security for this loan, CTCB obtained and continues to hold first priority security interests in real property (including a deed of trust) and personal property of said entities, and the proceeds, products, rents, and profits, thereof. As of the petition date, CTCB was owed \$10,000,000 principal, together with interest, costs, charges, and fees.

**THE DEBTORS' MOTION TO USE CASH COLLATERAL AND TO OBTAIN  
POST-PETITION FINANCING**

5. The Debtors filed voluntary petitions under Chapter 11 of the United States Bankruptcy Code in this Court on May 4, 2000. No trustee has been appointed and the Debtors continue to operate their affairs as debtors-in-possession.

6. Just prior to the bankruptcy filing, Debtors prepared certain assumptions for a Chapter 11 business plan for calendar year 2000. Among the assumptions set forth by the Debtors was that “all mortgage debt and corresponding interest [shall be] paid in the normal course of business subsequent to filing.” Cash flow projections for the post-petition period through December 2000 show mortgage repayments to the non-Chase lenders (including CTCB) totaling several hundred thousand dollars in principal payments per month. A copy of the assumptions and projections is attached hereto as Exhibit “B”.

7. Immediately upon the filing of the above bankruptcy cases, the Debtors sought entry of an Order authorizing their use of cash collateral and to obtain post-petition financing.

Originally, the Debtor's application did not provide for interest payments to CTCB and the other Pre-Petition Non-Primed Lenders and the motion was opposed by such lenders .

8. Ultimately, the DIP financing application was modified to provide for interest payments to be paid to CTCB and the other lenders.

9. Prior to the final hearing date on the cash collateral motions, Debtors' counsel circulated various drafts of a proposed form of Order.

10. Each form of Order drafted by Debtors' counsel that was circulated to the parties in interest contained a provision stating that the Movants would be paid "**all amounts of accrued and unpaid interest through June 30, 2000** at the non-default contract rate" by July 3, 2000.

11. The proposed form of Order presented to the Court by Debtors' counsel at the June 2, 2000 final hearing on their motion to use cash collateral and obtain post-petition financing contained the same provision.

12. Based upon the terms of the proposed Order, CTCB and the other Pre-Petition Non-Primed Lenders withdrew their opposition to entry of the June 2, 2000 Adequate Protection Order.

#### **THE DEBTORS' VIOLATION OF THE ADEQUATE PROTECTION ORDER**

13. By July 3, 2000, in violation of the Adequate Protection Order, the Debtors failed to pay CTCB the considerable **pre-petition** interest that had accrued and was unpaid through June 30, 2000.

14. By letter dated July 18, 2000 to Debtors' counsel submitted jointly on behalf of the Pre-Petition Non-Primed Lenders, a copy of which is annexed hereto as Exhibit "C", demand was made for the pre-petition interest owed to the lenders in accordance with the Adequate Protection Order . Despite said demand, the required payment has not been made.

15. As set forth in the Affidavit of Jerry Li, attached hereto as Exhibit "D", ChinaTrust Commercial Bank (New York Branch) is owed the sum of \$73,194.44 in pre-petition interest.

### **RELIEF REQUESTED**

16.. CTCB requests entry of an Order enforcing paragraph nineteen of the Adequate Protection Order and compelling the Debtors to pay the aforesaid amount owed for unpaid interest accruing prior to the May 4, 2000 bankruptcy filing date.

17. No previous application for the relief requested herein has been made to this or any other Court.

### **BASIS FOR THE RELIEF REQUESTED**

18. Section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §105(a), empowers this Court to take "any action" or make "any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process". It is black letter law that a bankruptcy court has the inherent authority to enforce its own orders. *See, e.g., Mego Int'l Inc. v. Packaging & Assembly Mfg. Corp.*, 30 B.R. 479, 482 (S.D. N.Y. 1983); *In re Kalpana Elecs., Inc.*, 58 B.R. 326, 335 (Bankr. E.D. N.Y. 1986)("The power to issue an order carries with it the power to enforce the order."); *In re Esposito*, 119 B.R. 305, 307 (Bankr. M.D. Fla. 1990), *citing*, *Young v. United States ex rel Vuitton et Fils, S.A.*, 481 U.S. 787 (1987); *Michaelson v. United States ex rel. Chicago, St. Paul, Minneapolis and Omaha R.R. Co.*, 266 U.S. 42, 65-66 (1924); *United States v. Askew*, 584 F.2d 960, 962 (10<sup>th</sup> Cir. 1978), *cert. denied*, 439 U.S. 1132 (1979). Ultimately, if the non-compliance persists, a bankruptcy court may hold a

party in contempt for refusing to obey a clear order. *Stockbridge Funding Corp. v. Kittay*, 158 B.R. 914 (S.D.N.Y., 1993).

19. There is no room for debate as to the import of paragraph nineteen of the Adequate Protection Order. The paragraph is clear and unambiguous --- **all** accrued and unpaid interest through June 30, 2000 is to be paid by July 3, 2000. The Debtors drafted the Adequate Protection Order and requested its entry. The pertinent terms remained unchanged during several rounds of discussions. Accordingly the Adequate Protection Order should be enforced as written. As the court held in *Spearman v. J & S Farms, Inc.*, 755 F.Supp. 137, 140 (D. S.C. 1990): “[A] judgment which is clear and unambiguous must be given its plain meaning and consequent legal effect. It may not be collaterally attacked under the guise of ‘construction’ ” *See also In re 85-02 Queens Blvd. Assocs.*, 212 B.R. 451, 455 (Bankr. E.D. N.Y. 1997). Even if the language in question is found to be subject to interpretation, which it should not be, any ambiguities must be construed against the drafter (in this case, the Debtors). *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 62 (1995); *Lobatto, et. al. v. Berney, et al.*, 1999 WL 672994, 7 (S.D.N.Y., 1999); *In re Fidelity Mortgage Investors*, 12 B.R. 641, 645 (S.D.N.Y., 1981).

20. The financial projections generated by the Debtors demonstrate that not only did the Debtors intend to pay the interest on the mortgage debt of CTCB and the other Pre-Petition Non-Primed Lenders, but that substantial principal amortization of these loans would also be accomplished.

21. Finally, the continued use by the Debtors of the cash collateral, including rents from the mortgaged properties, is resulting in a significant erosion of CTCB’s collateral position and underscores the importance of including the pre-petition interest payments as part of the

“adequate protection” which the Court has already provided for in its order. Section 361 of the Code provides the means for insuring that secured creditors like CTCB are compensated for the depreciation of their collateral. *In re Trombley* 34 B.R. 141, 143-144 (D. Vt, 1983); *In re Wolsky* 53 B.R. 751, 755 (D.N.D., 1985). A creditor is entitled to the “benefit of its bargain”, including receipt of principal and interest payments, and to be protected against impairment of its interest in the Debtors’ collateral. *Wolsky*, at 755. Bankruptcy courts have also demonstrated a willingness, in the context of DIP financing, to award pre-petition interest to pre-petition secured lenders as adequate protection for the decline in its collateral position due to the use of its cash collateral by the Debtor. See *In re Revco D.S., Inc.* 901 F.2d 1359 (6<sup>th</sup> Cir., 1990). The court order providing for the payment of all interest owed to CTCB is well supported by the facts and law applicable to this case and should be enforced.

#### **WAIVER OF MEMORANDUM OF LAW**

22. Given the nature of the relief requested, Movants respectfully request that this Court dispense with and waive the requirement of Local Rule 9013-1(b) for the submission of a memorandum of law.

### **CONCLUSION**

WHEREFORE China Trust Commercial Bank (New York Branch) requests entry of an Order, enforcing paragraph nineteen of the Adequate Protection Order and compelling the Debtors to pay it the sum of \$73,194.44 constituting the amount of unpaid interest which accrued on the principal indebtedness prior to the filing of the Debtors' Chapter 11 bankruptcy petition.

Dated: September 26, 2000

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